



BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2018-0073]

Decision to Authorize the Importation of Fresh Guava from Taiwan into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh guava fruit from Taiwan into the continental United States. Based on the findings of the pest risk analysis, which we made available to the public to review and comment through a previous notice, we have concluded that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh guava fruit from Taiwan.

DATES: The articles covered by this notification may be authorized for importation after [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2242.

SUPPLEMENTARY INFORMATION:

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-12, referred to below as the regulations), the Animal and Plant Health Inspection Service

(APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a notice-based process based on established performance standards for authorizing the importation of fruits and vegetables. The performance standards, known as designated phytosanitary measures, are listed in paragraph (b) of that section. Under the process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on the findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the *Federal Register* announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of that fruit or vegetable.

In accordance with that process, we published a notice¹ in the *Federal Register* on December 14, 2018 (83 FR 64314-64315, Docket No. APHIS-2018-0073), in which we announced the availability, for review and comment, of a pest risk assessment (PRA) that evaluated the risks associated with the importation into the continental United States of fresh guava fruit from Taiwan and a risk management document (RMD) prepared to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We solicited comments on the PRA and RMD for 60 days ending on February 12, 2019. We received five comments by that date. They were from private citizens, the California Department of Food and Agriculture (CDFA), and the Florida Department of Agriculture and Consumer Services (FDACS).

¹ To view the notice, PRA, RMD, supporting documents, and the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0073>.

One of the commenters expressed general support for the importation of guava from Taiwan into the United States, while another expressed general opposition to the importation of fruits and vegetables into the United States. The other three commenters provided comments regarding the notice and its supporting documentation. Below, we discuss these comments, by topic.

Comments on the Pest Risk Assessment

The PRA contained a pest list of pests associated with guava and known to occur in Taiwan. The PRA identified 23² pests as being of quarantine significance and likely to follow the pathway on guava from Taiwan, and therefore possible candidates for risk mitigation.

CDFA stated that, in addition to the 23 pests identified as being of quarantine significance, there were another 12 pests listed on the pest list that were rated as either an “A” pest or “B” pest according to CDFA’s pest rating system: *Aleurodicus dispersus*, *Ceroplastes floridensis*, *Coccus viridis*, *Ferrisia virgata*, *Kilifia acuminata*, *Milviscutulus mangiferae*, *Paracoccus marginatus*, *Planococcus minor*, *Pseudococcus jackbeardsleyi*, *Pulvinaria psidii*, *Rusellapsis pustulanus*, and *Selenothrips rubrocinctus*. Under CDFA’s rating system, a pest given an “A” rating is a plant pest of known economic importance subject to a State of California-enforced action that involves eradication, quarantine regulation, containment, rejection, or other holding action. A pest given a “B” rating is a pest of known economic importance subject to eradication, containment, control, or other holding action at the discretion

² Due to a typographical error, the PRA erroneously stated that 24 pests had been identified, although only 23 were listed; the RMD correctly stated that only 23 had been identified. This notice will use the latter number.

of the individual county agricultural commissioner within the State of California.³ The commenter stated that mitigations should be developed for these pests as well.

In § 319.56-4 of the regulations, paragraph (c) provides that if a fruit or vegetable is not authorized importation into the United States, APHIS will not authorize its importation until we examine the pest risk associated with its importation and determine that the risk posed by each quarantine pest associated with the importation of the commodity can reasonably be mitigated by the application of one or more mitigation measures. Additionally, consistent with international standards to which the United States is a signatory,⁴ the regulations define a *quarantine pest* as: “A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed there and being officially controlled.” For purposes of an APHIS risk assessment, the “endangered area” is the geographical area of the United States into which a foreign country has requested that APHIS authorize importation of the commodity; in the case of the guava from Taiwan, this is the continental United States.

With regard to 11 of the 12 pests cited by CDFA (*Aleurodicus dispersus*, *Ceroplastes floridensis*, *Coccus viridis*, *Ferrisia virgata*, *Kilifia acuminata*, *Milviscutulus mangiferae*, *Planococcus minor*, *Pseudococcus jackbeardsleyi*, *Pulvinaria psidii*, *Rusellapsis pustulanus*, and *Selenothrips rubrocinctus*), while these pests were listed in the pest list of our PRA, they are all present in the United States and not under Federal official control, and therefore do not meet our definition of a *quarantine pest*. Therefore, we do not consider it necessary to develop mitigations for these pests, irrespective of their rating within CDFA’s system.

³ For further information, see https://ucanr.edu/sites/plantpest/Regulatory_Information/Pest_Ratings/.

⁴ See https://www.ippc.int/largefiles/adopted_ISPMs_previousversions/en/ISPM_05_2007_En_2007-07-26.pdf.

However, APHIS has developed a program, the Federally Recognized State Managed Phytosanitary Program (FRSMP), to afford protections to States when commodities are determined at a port of entry to harbor a plant pest that is not a quarantine pest but is of concern to a particular State. Information regarding the petition process for FRSMP is found here: https://www.aphis.usda.gov/plant_health/plant_pest_info/frsmp/downloads/petition_guidelines.pdf.

With regard to the twelfth pest mentioned by CDFA (*Paracoccus marginatus*), this pest was, in fact, not included in the pest list in our PRA. We agree that *P. marginatus* is associated with guava and known to occur on fruit, but could find no evidence suggesting it is present in Taiwan; this is why it was not included in the pest list. CDFA did not provide a reference regarding the pest's presence in Taiwan; therefore, we cannot evaluate their assertion. We also note that *P. marginatus* is present in the United States and not under official control, and thus not a quarantine pest.

Finally, CDFA stated that *Phyllostica psidiicola*, a fungal pathogen, is present in Taiwan, not present in the continental United States, and known to cause severe black rot in guavas. CDFA requested that it be included in the PRA.

We agree that *Phyllostica psidiicola* is present in Taiwan and not present in the continental United States, and have determined that it is a quarantine pest and could follow the pathway on importation of guavas from Taiwan into the continental United States. Therefore, we have prepared an addendum to the PRA that evaluates *P. psidiicola*, assigns it a Medium risk rating, and determines that it is a possible candidate for risk mitigation. We also have revised our RMD to include *P. psidiicola* as a quarantine pest that could follow the pathway on the importation of guavas from Taiwan into the United States. The addendum to the PRA and the revised RMD are available on Regulations.gov, or by contacting the individual listed in this notice under FOR FURTHER INFORMATION CONTACT.

The inclusion of *P. psidiicola* in the RMD does not alter the mitigations of the RMD from those we initially proposed. *P. psidiicola* causes corky lesions on the surface on infected fruit that are easily detected during visual inspections, and we proposed both pre-export inspection by the national plant protection organization of Taiwan and port-of-entry inspections as components of our systems approach for the importation of guava from Taiwan.

That being said, the revised RMD does include one additional mitigation measure not included in the initial RMD. We discuss this mitigation measure and the basis for its inclusion later in this document.

Comments on the Risk Management Document

We proposed that a portion of a biometric sample of all consignments of guavas from Taiwan intended for export to the United States would have to be cut open by the NPPO of Taiwan and inspected for internally feeding quarantine pests.

FDACS questioned whether the fruit cutting would be effective. They requested data from the NPPO regarding the efficacy of fruit cutting to detect quarantine pests that feed internally.

The efficacy of fruit cutting as a means of detecting quarantine pests is long established,⁵ and the inspectors who will conduct the cutting in Taiwan have been trained by the NPPO in proper fruit cutting to sample for pests. While we acknowledge FDACS' legitimate interest in ensuring that infested guava are not imported from Taiwan into the State of Florida, we would only request fruit-cutting data from an NPPO and consider sharing it with external parties when

⁵ For example, see: Cavey, J.F. 2003. *Mitigating introduction of invasive plant pests in the United States*. Pages 350 – 361(Chapter 13). In *Invasive Species: Vectors and Management Strategies*, G.M. Ruiz and J.T. Carlton, editors. Island Press, Washington DC. See also: Gould, W.P. 1995. *Probability of Detecting Caribbean Fruit Fly (Diptera: Tephritidae) Infestations by Fruit Dissection*. Florida Entomologist 78(3): 502-507.

there is reason to believe that the NPPO is not conducting fruit cutting or is doing so in an ineffective manner. This is not the case with Taiwan.

We also note that all guava imported into the United States will be subject to additional cutting by Customs and Border Protection in accordance with 7 CFR part 305 at ports of entry into the United States.

We proposed that the guava would have to be treated with cold treatment for *Bactrocera* spp. fruit flies, or alternatively, irradiated.

FDACS expressed concern that the cold treatment would not be effectively applied. They stated that misapplication of cold treatment is a recurring issue, and cited two examples that they considered evidence of failure of in-transit cold treatment and indicative of the liabilities of cold treatment as a mitigation measure: The discovery of live fruit flies on cold-treated clementines from Spain, later, clementines from Morocco. Because of the possibility of cold treatment failure and the high likelihood that fruit flies may become established in Florida, if introduced, FDACS requested that we prohibit the importation of guava from Taiwan into the State of Florida.

The detection of fruit flies on clementines from Spain occurred in 2001 and was determined to be the result of an inadequate cold treatment schedule, rather than misapplication of an effective treatment schedule.⁶ It resulted in a holistic review and revision of the manner in which APHIS evaluates and approves phytosanitary treatments, and should not be considered indicative of current practices.

Based on a site visit that APHIS conducted, the detection of fruit flies on clementines from Morocco was determined to be the result of failure to pre-cool the fruit adequately prior to

⁶ These findings are discussed at length in a 2002 interim rule (67 FR 63529-63539, Docket No. 02-071-1) that revised our phytosanitary treatment regulations based on the detection.

applying cold treatment. We also determined that this pre-cooling failure was, in turn, due to uniquely inhospitable climatic conditions in the area of Morocco surrounding the pre-cooling facility, a desert where daytime temperatures during the summer months routinely exceed 90 °F. We addressed this failure by revising the operational workplan that Morocco had entered into with APHIS to specify additional pre-cooling and temperature reading procedures at pre-cooling facilities.⁷

Given Taiwan's more temperate climate, we do not consider a similar pre-cooling failure likely to occur in Taiwan.

Additionally, we note that cold treatment is not the only mitigation measure that we proposed in order to address *Bactrocera* spp. fruit flies. We proposed that places of production would have to have a fruit fly trapping system in place, as certified by the NPPO of Taiwan; that fallen fruit would have to be removed from places of production to eliminate possible fruit fly host material; that packinghouses where the guava was processed for consignment to the United States would have to be registered with the NPPO of Taiwan and determined to be pest exclusionary; and that a portion of a biometric sample of each consignment of guava intended for export to the United States would have to cut open by the NPPO of Taiwan and inspected for fruit fly larvae and other quarantine pests.

For the above reasons, we do not consider it necessary to prohibit the importation of guava from Taiwan into the State of Florida.

A commenter suggested that the guava could be irradiated as a treatment for fruit flies.

We agree, and included this treatment option in the RMD.

⁷ See

https://www.aphis.usda.gov/import_export/plants/plant_imports/federal_order/downloads/2018/DA-2018-01.pdf.

Finally, following the close of the comment period, the NPPO of Taiwan informed us that, as a standard industry practice, all guava intended for export from Taiwan for commercial sale are bagged. Accordingly, the NPPO indicated that they would be amenable to including bagging as an additional, voluntarily imposed mitigation measure to address the pest risk associated with the importation of guava into the continental United States, with the specific logistics of this bagging included in the operational workplan that they will enter into with APHIS. This additional bagging requirement is included in the revised RMD.

Therefore, in accordance with § 319.56-4(c)(3)(iii), we are announcing our decision to authorize the importation of fresh guava fruit from Taiwan into the continental United States subject to the following phytosanitary measures:

- Importation in commercial consignments only;
- Development of an operational workplan that the NPPO of Taiwan must enter into with APHIS;
- Registration of places of production and packinghouses with the NPPO of Taiwan;
- Regular inspections of places of production by the NPPO;
- Grove sanitation and trapping for fruit flies in places of production;
- Safeguarding and identification of the lot throughout the growing, packing and export process;
- Bagging of fruit intended for export;
- Phytosanitary treatment (cold treatment or irradiation);
- Pre-export inspection by the NPPO, including fruit cutting of a portion of a biometric sample, and issuance of a phytosanitary certificate with an additional declaration that

states that the fruit have been produced in accordance with the requirements of the systems approach, inspected, and found free of *P. psidii* and *P. psidiicola*; and

- Port of entry inspections.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at <https://epermits.aphis.usda.gov/manual>). In addition to these specific measures, fresh guava fruit from Taiwan will be subject to the general requirements listed in § 319.56-3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notice are covered under the Office of Management and Budget (OMB) control number 0579-0049. The estimated annual burden on respondents is 1,632 hours, which will be added to 0579-0049 in the next quarterly update.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851-2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 10th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019-22648 Filed: 10/16/2019 8:45 am; Publication Date: 10/17/2019]